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OFFICE OF PETITIONS

In re Application of :
Odamura et al. :
Application Number: 10/677122 : ON PETITION
Filing Date: 10/01/2003 :
Attorney Docket Number: 1300- :
000005 :

This is a decision on the "PETITION UNDER 37 C.F.R. 1.10(e) FOR RETROACTIVE FILING DATE," filed on 19 September, 2007, which is treated as a petition to withdraw the holding of abandonment in the above-identified application. This is also a decision on the "ALTERNATIVE PETITION UNDER 37 CFR 1.137(b) FOR REVIVAL OF UNINTENTIONALLY ABANDONED APPLICATION."

The petition to withdraw the holding of abandonment is **GRANTED**.

The petition under 37 CFR 1.137(b) is **DISMISSED AS MOOT**.

A review of the record reveals that a final Office action was mailed on 8 March, 2007, setting a three (3) month shortened statutory period for reply. No response having been timely received, the application was held abandoned on 9 June, 2007. The filing of the present petition precedes the mailing of Notice of Abandonment.

On 19 September, 2007, a Request for Continued Examination (RCE) Transmittal, a three (3) month extension of time and the required fee, and an amendment as the submission required under 37 CFR 1.114 were received, along with the present petition. The RCE Transmittal itemizes the filing of the three (3) month extension of time and the submission under 37 CFR 1.114.

Petitioner alleges that the reply to the final Office action mailed on 8 March, 2007, was deposited in "Express Mail" service

with the U.S. Postal Service on 10 September, 2007. In support, petitioners have supplied a copy of Express Mail label no. EV 755419224US (the same Express Mail number found on the RCE Transmittal sheet. The Express Mail label contains a "date-in" of "9 10 07".

37 CFR 1.10(c) states:

Any person filing correspondence under this section that was received by the Office and delivered by the "Express Mail Post Office to Addressee" service of the USPS, who can show that there is a discrepancy between the filing date accorded by the Office to the correspondence and the date of deposit as shown by the "date-in" on the "Express Mail" mailing label or other official USPS notation, may petition the Director to accord the correspondence a filing date as of the "date-in" on the "Express Mail" mailing label or other official USPS notation, provided that:

(1) The petition is filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date other than the USPS deposit date;

(2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail;" and

(3) The petition includes a true copy of the "Express Mail" mailing label showing the "date-in," and of any other official notation by the USPS relied upon to show the date of deposit.

The Office considers the date the paper or fee is shown to have been deposited as "Express Mail" to be the "Date In", or other evidence from the USPS on the Express Mail label.¹ That is the date that verifies that the package was actually mailed. In view of the above, the showing of record is that the correct date of deposit of the RCE Transmittal, amendment, and petition for extension of time in Express Mail is 10 September, 2007.

¹ MPEP 513.

As such, the RCE, fee, and submission were timely filed on 10 September, 2007, in response to the final Office action mailed on 8 March, 2007.²

In view of the above, the petition is granted. No petition fee is required.

As petitioners have provided convincing evidence that a response to the final Office action mailed on 8 March, 2007, was filed on 10 September, 2007, the showing of record is that a response was timely filed, and there is no abandonment in fact. Any inconvenience caused to applicant is regretted.

As the holding of abandonment is withdrawn, the petition under 37 CFR 1.137(b) is DISMISSED as involving a moot issue.

The application is being referred to Technology Center Art Unit 1794 for further processing.

Telephone inquiries concerning this matter may be directed to the undersigned at (571)272-3231.



Douglas I. Wood
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² As 8 September, 2007, fell on a Saturday, the response filed on Monday, 10 September, 2007, was a timely response. 37 CFR 1.7(a)